

Feb-01-2002 05:44pm From-

JOHN D. DINGELL  
16TH DISTRICT, MICHIGAN

RANKING MEMBER  
COMMITTEE ON  
ENERGY AND COMMERCE

CO-CHAIR  
HOUSE GREAT LAKES  
TASK FORCE  
MEMBER

MIGRATORY BIRD  
CONSERVATION COMMISSION

204682

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2216**

February 1, 2002

ENTERED  
Office of the Secretary

FEB 04 2002

Part of  
Public Record

The Honorable Linda Morgan  
Chairman  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Re: Riverview Trenton Railroad Company - Acquisition and Operations  
Exemption - Crown Enterprises  
Finance Docket No. 33980

Dear Madame Chairman:

I am writing to inquire further into the above referenced matter due to the enormous impact it will have on the local communities in my congressional district. New and troubling developments have arisen since my last letter to you in March 2001. As such, I respectfully request that the Board review and respond to the following questions prior to issuing its decision on February 15, 2002 concerning the petition to revoke the notice of exemption granted to the Riverview Trenton Railroad Company (RTRR).

1. Given the potentially harmful impact RTRR may have on the local communities, would the application process, as opposed to the exemption process, provide greater opportunity to explore whether RTRR's proposal is in the public interest?
2. Has the Board confirmed whether, through its notice of exemption, RTRR is seeking to convert non-jurisdictional property into jurisdictional rail property? If so, is there a sufficient basis for revocation of that notice under the rule applied in the Jefferson Terminal case, which stated that "[t]he [class exemption] procedures were not intended to apply to cases in which a non-carrier seeks to convert what could be non-rail property into a rail line." *Jefferson Term. R.R. - Acquisition & Operation Exemption - Crown Enterprises, Inc.*, STB Finance Docket No. 33950, slip op. at 4 (STB served Mar 19, 2001) ("Jefferson Terminal").
3. Has RTRR rebutted the evidence submitted by the affected communities and others opposed to RTRR's project showing that RTRR was motivated to seek Board jurisdiction to avoid local land use and zoning authority? If so, how? Did RTRR rebut this evidence by submitting documentary evidence of its intent to be a jurisdictional rail carrier prior to threats of local land use regulation or did it merely demonstrate that RTRR had some intention of using rail tracks on the property as a non-jurisdictional carrier? What can the Board do to assure itself that RTRR is not abusing the Board's processes? If the Board finds that RTRR appears to have abused the process, what actions does the Board have available to it to address this finding?
4. Are the existence of false and misleading statements in a notice for exemption a ground for revocation? If so, what findings has the Board made with regard to the concerns of the local

File in Docket No. FD-33880

T-342 P.002/004 F-862

WASHINGTON OFFICE  
ROOM 2328  
HAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20517-2216  
(202) 225-4071

DISTRICT OFFICES  
5485 SCHAEFER ROAD  
DEARBORN, MI 48126-3277  
(313) 846-1276

25 EAST FRONT STREET  
SUITE 103  
MONROE, MI 48161  
(734) 243-1848

OFFICE OF  
CHAIRMAN MORGAN

2002 FEB - 1 P 5:47

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

Page 2

communities and their supporters that the notice of exemption and subsequent filings by RTRR contained a number of incorrect or misleading statements? These statements include: (i) language that suggested RTRR was seeking authority to acquire this site, when, in fact, it had already acquired it without seeking authority; (ii) language that falsely suggested the existence of jurisdictional track or a jurisdictional rail carrier at this site prior to RTRR's acquisition; and (iii) a false claim subsequently rejected by the Board's Section of Environmental Analysis, that no environmental review is necessary for the proposed project.

5. How has the Board addressed the following environmental issues?

- (a) I understand that RTRR contracted with URS Corporation ("URS") to prepare RTRR's environmental report to the STB's Section of Environmental Analysis ("SEA") in No. 34040. Despite URS having prepared that report on behalf of RTRR, URS has been allowed to serve as SEA's contractor to review the same subject and prepare the draft Environmental Assessment ("EA") for the Board. Is this true and if so, how has the Board addressed this apparent conflict of interest with regard to URS?
- (b) Access to waterborne freight appears to be one of the major reasons RTRR chose to site its project along the Detroit River, the border between the U.S. and Canada, and has spent almost \$300,000 for rights to use a neighboring deep-water marina. Nonetheless, RTRR claims that its plans to receive waterborne traffic are tentative and long-term, and the draft EA did not include an analysis of water connections. Is it within the Board's discretion to include in its analysis in these proceedings the impacts of potential waterborne traffic? If the Board does not analyze the impacts of such traffic now, can the Board assure local communities that they will be protected from harmful impacts due to RTRR's future use of waterborne traffic? Is it true that the scope of any later review by the U.S. Army Corps of Engineers is likely to be different and narrower than the scope of review the Board could now undertake? What can the Board do to assure local communities that waterborne freight will not be a part of this project unless and until its environmental impacts are fully analyzed by the Board?
- (c) Has the Board determined the peak number of trains and trucks that will be using this facility? If so, what is that number and how was it determined? Did the Board apply that peak number consistently for all of its analyses, including in the EA? If not, why not and where in the analysis is it and is it not used? How is the peak number affected by possible future waterborne traffic?
- (d) At what point in the process did RTRR and URS identify for SEA that RTRR may carry hazardous materials at this facility. Was the timing of this notice appropriate? What will the Board do to assure that such hazardous materials are safely handled at, to, and from this facility?
- (e) What steps has the Board taken to follow up on the concerns of Canadian National/Grand Trunk Western, which is the sole direct rail connection to the site, about the operational assumptions in the draft EA, including the viability of its possible connections with

Page 3

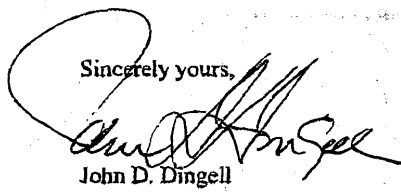
RTRR and the adequacy of area tracks to handle significant volumes of large intermodal cars? If the Board determines that unsupported assumptions were made concerning RTRR's future operations, what options does the Board have to correct the unsupported assumptions and re-analyze noise, air pollution, traffic and congestion based on more accurate figures?

- (f) Has the Board taken into consideration construction of new track on this property and its possible environmental impacts?
- (g) Is it within the Board's authority to republish for public comment a revised draft EA?
- (h) Did the draft EA consider increased spending on road work that would be required as a result of the increase in heavy truck traffic on highways to and from RTRR's facility? Did it consider the disruption of road transportation that would be caused by that work or more frequent repairs? If not, why not?

Due to the importance of ensuring that all relevant facts are before the public, I believe it would be inappropriate for the Board to issue its decision on this matter prior to answering the above questions. Thank you in advance for your prompt response. Additionally, I ask that this letter and its answers be inserted into the record.

With every good wish,

Sincerely yours,



John D. Dingell  
Member of Congress

pf